

In re: Michael J. Collins et al.  
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REMARKS

This is in response to the Official Action mailed June 9, 2003 (Paper No. 5).  
Applicant notes with appreciation the Examiner's careful review of the pending claims.

In the June 9, 2003 Official Action, the Examiner has taken the position that claims 1-4 are obvious based on a combination of AOAC Official Method 985.15 (A3) ("the AOAC method") taken together with published application GB 2261072 ("Kock") and U.S. Patent No. 5,289,124 to Jerosch-Herold.

In response, Applicants have amended claim 1 to more clearly highlight the present invention. In particular, the recitations of claim 3 have been included in claim 1 by adding the recitations "on" to the first paragraph and combining the first and second paragraphs. Claim 3 has accordingly been cancelled.

With respect to the combination as applied by the Examiner, Applicants submit that the combination is meaningless or inoperable and cannot be properly applied as against the pending claims.

Starting from the AOAC reference, Applicants respectfully point out that it is a microwave-based extraction procedure for determining the fat and oil content in a sample. Once the AOAC method is carried out, the percentage (even if "crude") of fat in a meat or poultry sample is (1) known and (2) gone. Stated differently, the fat and oil are removed when the AOAC method is carried out. Accordingly, any sample treated using the AOAC method will no longer contain any fat or oil. Thus using the AOAC method in combination with the Kock reference is meaningless because the person of skill in the art would never use Kock's method on a sample from which the fat and oil had been knowingly removed. Accordingly, combining the AOAC test with the Kock method makes no sense. Because the skilled person is presumed to act in a rational manner, the AOAC reference and the Kock publication cannot be combined in the method set forth by the Examiner in the Official Action.

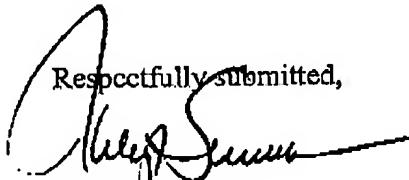
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The Jerosch-Herold patent adds nothing to the combination that provides any relief from the failures of the AOAC-Kock combination. First, the Jerosch-Herold patent is from a non-analogous art: the determination of the fluid-flow permeability of porous underground rock formations. Other than the use of NMR spectroscopy and mentioning applying Teflon tape to a sample, no reason exists for a person of skill in the art of determining fat and oil content, or a person of skill in the art of microwave extraction, or a person of skill in the art of porous underground rock formations, to combine the techniques found in these three references.

It thus becomes evident that the references have been applied in hindsight, possibly because of their relationship to other claims in a common parent application and its siblings. Once the claims at issue are evaluated on their own merits and in the absence of the claims pending in the parent or sibling applications, the combination as applied by the Examiner no longer makes sense.

Accordingly, Applicants respectfully submit that the claims as pending define over the rejection and combination as applied to date. Therefore, allowance of these claims is respectfully requested.

Respectfully submitted,

  
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I hereby certify that this correspondence is being transmitted by facsimile to the U.S. Patent and Trademark Office, c/o Technology Center 1700, Attn: Examiner Yelena G. Galkh, Ph.D., at facsimile number 703-872-9310 on September 9, 2003.

  
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